

Appl. No. 10/792,351
Docket No. 9567
Amdt. dated March 6, 2007
Reply to Office Action mailed on December 6, 2006
Customer No. 27752

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REMARKS

Claim Status

Claims 14 – 25 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §102(b)/§103(a) Over Buck et al. (US 6,254,566)

Claims 14-25 have been rejected under 35 USC §102(b) as being anticipated by, or in the alternative, under 35 USC §103(a) as obvious over Buck et al.

With respect to the novelty of claims 14-25: Applicants respectfully traverse this rejection. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628 (Fed. Cir. 1987). In the instant case, the Office Action states:

Regarding claim 14, Buck et al. teaches a tampon (40) and a tampon applicator (20) in combination for expulsion of said tampon (40) into a vaginal cavity of a female user, comprising...said tampon (40) comprising a fluid permeable bag and absorbent material loosely dispersed within said permeable bag, said tampon (40) being housed within said hollow interior portion of said tampon holder tube (22) in a pre-expelled position; and...

However, nowhere in the Office Action is there a statement as to where there is a disclosure or teaching in Buck et al. of a tampon and tampon applicator combination wherein the tampon comprises a fluid permeable bag, and absorbent material loosely dispersed within the fluid permeable bag. As Buck et al. fails to disclose or teach a tampon and a tampon applicator in combination for expulsion of said tampon into a vaginal cavity of a female user wherein the tampon comprises a fluid permeable bag and absorbent material loosely dispersed within the fluid permeable bag, Applicants respectfully request that the rejection under 35 USC §102(b) be reconsidered and withdrawn.

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With respect to claims 14-25 and non-obviousness: Applicants respectfully traverse the rejection of claims 14-25 as Buck et al. fails to disclose or suggest a tampon and tampon applicator combination wherein the tampon comprises a fluid permeable bag, and absorbent material loosely dispersed within the fluid permeable bag.

As stated in the MPEP §2143, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

1. No suggestion or motivation to modify Buck et al. in light of the reference teachings

Applicants submit that there is no suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify Buck et al. to achieve the claimed invention.

Buck et al. discloses that its tampons may comprise several forms. For example, the tampon 40 may comprise at least two longitudinally unjoined sections 40A and 40B and a base or joining section 41. (FIG. 9) In another form the tampon 40 herein, the tampon 40 may comprise at least two longitudinally semi-joined sections 40C and 40D. (FIG. 10) In another embodiment herein, the tampon 40 may be a substantially solid device. (FIG. 11) Col. 8, Lines 13-34 There is no suggestion or motivation provided in Buck et al. to modify its disclosed tampon with two longitudinally semi-joined sections, tampon with two longitudinally semi-joined sections, or tampon which is a substantially

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solid device, to produce the tampon of the present invention, which comprises a fluid permeable bag, and absorbent material loosely dispersed within the fluid permeable bag.

Accordingly, Applicants submit that there is no motivation to modify Buck et al.

2. Does not teach or suggest all the claim limitations

On page 3 of the Office Action it is stated that Buck et al. teaches a tampon wherein said tampon comprises a fluid permeable bag and absorbent material loosely dispersed within said permeable bag. Applicants respectfully disagree. Buck et al. discloses a tampon with two longitudinally semi-joined sections, a tampon with two longitudinally semi-joined sections, or a tampon which is a substantially solid device, not the tampon of the present invention.

In addition Buck et al. provides no motivation or suggestion to one of ordinary skill in the art to modify its disclosed tampon to produce the tampon of the present invention.

Accordingly, Applicants submit that Buck et al. does not disclose or suggest all of the claim elements.

For the reasons set forth above, Applicants respectfully submit that the Office Action does not to make out a *prima facie* case of obviousness for claims 14-25.

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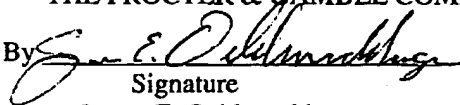
Conclusion

This response represents an earnest effort to distinguish the invention as claimed from the applied reference. In view of the foregoing, reconsideration of this application, and allowance of the pending claim(s) is respectfully requested.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

By



Signature

James E. Oehlenschlaeger

Registration No. 50,164
(513) 634-3447

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Customer No. 27752